

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF PERKINS FAMILY) APPEAL NO. 06-A-2111
TRUST - THOMAS R. PERKINS, SR. TRUST from the decision) FINAL DECISION
of the Board of Equalization of Lemhi County for tax year 2006.) AND ORDER

AGRICULTURAL PROPERTY APPEAL

THIS MATTER came on for hearing October 31, 2006, in Salmon, Idaho, before Board Member David E. Kinghorn. Board Member Lyle R. Cobbs also participated in this decision. Appellant Thomas Perkins, Attorney Milton Slavin, Miner Lynn Dahle, and Rancher Derrold Salvin appeared. Assessor R. J. Smith, Appraiser Wayne Summers and Attorney Paul Withers appeared for Respondent Lemhi County. This appeal is taken from a decision of the Lemhi County Board of Equalization (BOE) denying the protest of the valuation for taxing purposes of property described as Parcel No. RP23N22E310001A.

The issue on appeal is whether subject qualifies for an exemption from property taxes pursuant to Idaho Code § 63-604.

The decision of the Lemhi County Board of Equalization is modified.

FINDINGS OF FACT

The assessed land value is \$90,000. Appellant requests the land value be reduced to \$36,330.

The subject property is a 15 acre parcel assessed as rural commercial and is part of a contiguous 79.5 acre parcel. Subject is located close to the Salmon river near Salmon, Idaho.

In 1998, Appellant petitioned the Planning and Zoning Commission to allow a gravel pit operation on subject land. The request was granted with the conditions that the operation be limited to five (5) acre increments and the property be reclaimed as the operation progressed. The gravel pit was operated by a third-party lessee. Appellant agreed that five (5) acres was properly classified as commercial use, because it was actively mined, but the remaining ten (10) acres should have been classified as agricultural because they are not part of the active mining operation.

Of the ten (10) remaining subject acres, approximately five (5) acres were devoted to a pond. Appellant explained the pond resulted from the mining operation and claimed it was part of the reclamation effort as per the Planning and Zoning Commission agreement. Appellant noted the pond banks needed some additional grading and sloping to comply with government standards, but stated no commercial benefit was being derived from the pond. Appellant therefore reasoned the pond was improperly assessed as commercial.

Appellant contended the outstanding five (5) acres of subject should be assessed as agricultural land because it was not actively mined and cattle sometimes wandered from the contiguous parcel and grazed the area. Appellant had leased the grazing rights of the contiguous parcel to a third party and it was shown there were no fences or other barriers separating subject from the larger parcel.

Respondent argued the pond should be considered commercial because the reclamation had not been completed.

Both parties agreed the five (5) acres of subject being actively mined were properly considered commercial. Respondent though, maintained the remaining five (5) acres were also commercial in nature because they were used to support the mining operation. Piles of gravel and other mining equipment were stored on the land. Respondent reasoned, these acres were part of the mining operation even though they were not being actively mined. Respondent argued the fact that cattle sometimes wander across the area was not sufficient to render the property agricultural.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their

respective positions, hereby enters the following.

Idaho code §63-604 provides that land actively devoted to agriculture is eligible for assessment as agricultural property when certain criteria are met, including when;

It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise, or is leased by the owner to a bona fide lessee for grazing purposes.

There is no doubt the contiguous parcel was used primarily for grazing by a third party and appropriately considered agricultural. The question is whether the subject property similarly belongs in this category. Both parties agreed the five (5) acres actively mined should be considered commercial.

Appellant claimed the pond should be classified agricultural because it was mostly complete and cattle used it for grazing purposes. Respondent argued the pond was not completely reclaimed as required in the Planning and Zoning Commission agreement, therefore, should remain commercial.

It was not disputed that cattle drink from and graze around the pond. While work may still need to be done to satisfy the terms of the reclamation agreement, it is clear no commercial benefit is being derived from the pond. These factors demonstrate the agricultural nature of this portion of subject.

The lingering question is how the remaining five (5) acres of subject should be classified. Appellant contended that because there is no active mining on these acres and cattle do some grazing, it should be considered agricultural.

Respondent, on the other hand, asserted that these acres were used to support the mining operation and should remain commercial.

It is true the grazing lease pre-dated the mining lease and originally included the entire subject property, but “[w]here use is the criterion” as here “the [agricultural] exemption is lost if the

property is appropriated to other uses.” Bristline v. Bassett, 47 Idaho 66, 71, 272 P.696, 701 (1928). Appellant acknowledged subject’s primary use was mining. When mining began, subject was effectively changed to commercial, including the five (5) acres in question. These acres are primarily being used to support the mining operation, as evidenced by the equipment and large piles of gravel being stored, and thus are commercial in nature.

Having considered all evidence presented in this matter, the Board has determined the five (5) acres being used in the active mining operation and the five (5) acres used to support the mining activity should be classified as commercial. The (5) five acre pond area, on the other hand, should be assessed as agricultural. The decision of the Lemhi County Board of Equalization is so modified.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Lemhi County Board of Equalization concerning the subject parcel be, and the same hereby is, modified to grant an agricultural exemption to only the five acre pond parcel.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

DATED this 27th day of April 2007.